

ARTICLE 10

ADMINISTRATION, APPEALS, VARIANCES, VIOLATIONS AND PENALTIES, ORDINANCE STRUCTURE AND INTERPRTATION

PART 1 10-100 ADMINISTRATION

10-101 Administration and Enforcement of Ordinance

Unless otherwise provided, the provisions of this Ordinance shall be administered and enforced by the Zoning Administrator. For purpose of this Ordinance the term Zoning Administrator shall include both the Zoning Administrator and the Director of Community Development either of whom may act. The Zoning Administrator shall have all necessary authority on behalf of the Board to administer and enforce the provisions of this Ordinance. Such authority, shall include (i) ordering in writing the remedying of any condition found in violation of this Ordinance; (ii) insuring compliance with this ordinance, bringing legal action, including injunction, abatement or other appropriate action or proceeding; and (iii) in specific cases, making findings of fact and, with the concurrence of the county attorney, conclusions of law regarding determinations of rights accruing under Section 15.2-2307 of the Code of Virginia.

10-102 Questions of Interpretation

The Zoning Administrator shall interpret the provisions of this Ordinance. An appeal of a decision of the Zoning Administrator interpreting any provision of this Ordinance shall be taken to the BZA as provided for in Part 3 of this Article.

PART 2 10-200 APPEALS

10-201 Initiation

Any person aggrieved or any officer, department, board, or bureau of the County affected by any decision of the Zoning Administrator or by any order, requirement, decision or determination made by any other administrative officer in the administration or enforcement of this Ordinance may appeal such order, requirement, decision or determination to the BZA, except a decision of the Zoning Administrator made pursuant to the provisions of Code Section 15.2-2299. Any zoning applicant or any other person who is aggrieved by a decision of the Zoning

Administrator made pursuant to the provisions of Section 15.2-2299 may petition the governing body for the review of the decision of the Zoning Administrator. All such petitions for review shall be filed within thirty (30) days from the date of the decision for which review is sought, and such petitions shall specify the grounds upon which the petitioner is aggrieved.

10-204

Decision on Appeals

1. The BZA may affirm or reverse, wholly or partly, or may modify the order, requirement, decision or determination appealed from.
2. The concurring vote of four (4) members of the BZA shall be required to reverse any order, requirement, decision or determination of the Zoning Administrator under this Ordinance.
3. The BZA shall render a decision on the appeal within ninety (90) days after receipt of the same, unless the appellant and the BZA mutually agree to an extended period of time. In the event said decision shall not be rendered within said time period, the appeal shall be deemed to be denied.

10-205

Stay of Proceedings

An appeal shall stay all proceedings in furtherance of the action appealed from unless the Zoning Administrator certifies to the BZA that by reason of facts stated in the certificate a stay would in the Zoning Administrator's opinion cause imminent peril to life or property. In such case, the proceedings shall not be stayed other than by a restraining order which may be granted by the BZA or by a court of record, on application and on notice to the Zoning Administrator and on due cause shown.

PART 3

10-300 VARIANCES

10-301

Initiation

Any property owner, tenant, government official, department, board or bureau may appeal to the BZA for a variance from the strict application of the terms of this Ordinance.

10-302

Authorization

1. The BZA may authorize a variance to the strict application of any specific requirement of this Ordinance when a property owner can show that his property was acquired in good faith and where by reason of the exceptional narrowness, shallowness, size or shape of a specific piece of property at the time of the effective date of the Ordinance, or where by reason of exceptional topographical conditions or other extraordinary situation or condition of such piece of property, or of the condition, situation, or development of property immediately adjacent thereto, the strict application of the terms of the Ordinance would effectively prohibit or unreasonably restrict the utilization of the property or where the BZA is satisfied upon the evidence heard by it, that the granting of such variance will alleviate a clearly **provable** hardship approaching confiscation, as distinguished from a special privilege or convenience sought by the applicant, provided that all variances shall be in harmony with the intended spirit and purpose of the Ordinance.
2. No variance shall be authorized until notice and public hearing has been held on same in accordance with the provisions this Ordinance.
3. The concurring vote of four (4) members of the BZA shall be required to authorize a variance.
4. The BZA shall render a decision on an appeal for a variance within ninety (90) days after receipt of same, unless the appellant and the BZA mutually agree to an extended period of time. In the event said decision shall not be rendered within said time period, the appeal shall be deemed to be denied.

10-303

Application for a Variance

1. An application for a variance shall be filed with the Zoning Administrator and shall contain the following information:
 - A. The specific provision or provisions of the Ordinance from which a variance is sought.
 - B. The nature and extent of the variance sought.
 - C. The special conditions of the property or the nature of use and/or development of immediately adjacent property which would make such variance necessary.

10-304

Standards for Variances

No variance in the strict application of any provision of this Ordinance shall be authorized by the BZA except upon the following findings made in the following sequence:

1. That the strict application of the Ordinance would produce undue hardship.
2. That such hardship is not shared generally by other properties in the same zoning district and the same vicinity and is not of so general or recurring a nature as to make reasonably practical the formation of a general regulation to be adopted as an amendment to the Ordinance.
3. That the authorization of such variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance.

Upon an affirmative finding, the BZA shall determine and authorize what variance, in its opinion, is the minimum that will afford relief; in so doing the BZA shall not be confined to the specific content of the appeal. In granting a variance the BZA may prescribe any conditions regarding the location, character and other features of the proposed structure or use as it may deem necessary or desirable in furtherance of the intent and purpose of this Ordinance, and may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with.

10-305

Unauthorized Variances

1. No variance shall be authorized that would purport to modify any definition set forth in Article 12.
2. No variance shall be authorized that would propose to permit the establishment of any use not otherwise permitted in the zoning district under the specific provisions of this Ordinance.
3. No variance shall be authorized that would result in an increase in density from that permitted by the applicable zoning district regulations.

4. No variance shall be authorized that would relate to nonconforming uses.
5. No variance shall be authorized that would reduce the amount of off-street parking spaces required by **Part 4** of Article **8**.
6. No variance shall be authorized that would relate to signs, except as specifically qualified by the provisions of **Part 5** of Article **8**.
7. No variance shall be authorized where the variance is required by a self-inflicted hardship created by the applicant.

10-306

Variance of Minimum Yard Requirements

Notwithstanding the other provisions of this Article, the Zoning Administrator and the BZA shall have the authority, as qualified below, to grant a variance to the minimum yard requirements if the Zoning Administrator finds in writing that: (i) the strict application of the ordinance would produce undue hardship; (ii) such hardship is not shared generally by other properties in the same zoning district and the same vicinity; and (iii) the authorization of the variance will not be of substantial detriment to an adjacent property and the character of the zoning district will not be changed by the granting of the variance. Prior to granting the variance, the Zoning Administrator shall give, or require the applicant to give, all adjoining property owners written notice of the request for variance, and an opportunity to respond to the request within twenty-one (21) days of the date of the notice. If any adjoining landowner objects to said request in writing within the time specified above, the request for variance shall be transferred to the BZA for decision.

PART4

10-400 VIOLATIONS, INFRACTIONS AND PENALTIES

10-401

General Provisions

1. Any person, whether owner, lessee, principal, agent, employee or otherwise, who violates any of the provisions of this Ordinance, or permits any such violation, or fails to comply with any of the requirements thereof, or who erects any building or improvements or uses any building or improvements or uses any land in violation the provisions of this Ordinance, shall be guilty of a misdemeanor and, upon

conviction thereof, shall be subject to punishment as provided hereinafter.

2. The Zoning Administrator may initiate appropriate actions or proceedings, including but not limited to injunction, mandamus or any other appropriate action to prevent, enjoin, abate or remove such building, structure, erection or use in violation of any provision of this Ordinance. Such action may also be instituted by any citizen who may be aggrieved or particularly damaged by any violation of any provisions of this Ordinance.

10-402

Criminal Violations and Penalties

1. Any violation of the provisions of this Ordinance other than those set forth in Section 10-403 below, shall be deemed a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than \$10 and not more than \$1,000. If the violation is uncorrected at the time of the conviction, the court shall order the violator to abate or remedy the violation in compliance with this Ordinance, within a time period established by the Court. Failure to remove or abate a zoning violation within the time period specified by the Court shall constitute a separate misdemeanor offense punishable by a fine of not less than \$10.00 nor more than \$1,000.00, and any such failure during any succeeding thirty (30) day period shall constitute a separate misdemeanor offense for each thirty (30) day period punishable by a fine of not less than \$10.00 nor more than \$1,000.00.
2. The remedy provided for in this Section shall be in addition to any other remedies provided by law; however, the designation of a particular violation of this Ordinance as an infraction pursuant to Section 10-403 below, shall preclude criminal prosecution of sanctions, except for any infraction also resulting in injury to any person or persons.

10-403

Infractions and Civil Penalties

1. Any violation of the following provisions of this Ordinance shall be deemed an infraction and shall be punishable by a civil penalty of \$100.00:
 - A. 2-508 (Inoperable vehicle)
 - B. 2-509 (Sale from vehicle)

C. 2-511 (Keeping of animals)

2. Each day during which any violation of the provisions enumerated in Paragraph 1 above is found to have existed shall constitute a separate offense. However, in no event shall any such violation arising from the same set of operating facts be charged more frequently than once in any ten (10) day period, nor shall a series of such violations arising from the same set of operative facts result in civil penalties which exceed a total of \$3,000.00.
3. The designation of a particular violation of this Ordinance as an infraction pursuant to Paragraph 1 above shall be in lieu of criminal sanctions, and except for any violation resulting in injury to any person or persons, such designation shall preclude the prosecution of a violation as a criminal misdemeanor.
4. After having served a notice of violation on any person committing or permitting a violation of the Zoning Ordinance provisions enumerated in Paragraph 1 above and if such violation has not ceased within such reasonable time as is specified in such notice, then, upon the approval of the County Attorney, the Zoning Administrator shall cause two (2) copies of a summons to be personally served upon such persons.
5. Such summons shall contain the following information:
 - A. The name and address of the person charged.
 - B. The nature of the infraction and the Ordinance provision(s) being violated.
 - C. The location, date and time that the infraction occurred or was observed.
 - D. The amount of the civil penalty assessed for the infraction.
 - E. The manner, location and time in which the civil penalty may be paid to the County.
 - F. The right of the recipient of the summons to elect to stand trial for the infraction and the date for such trial.
6. The summons shall provide that any person summoned for a

violation may elect to pay the civil penalty by making an appearance in person or in writing by mail to the County Office of the Treasurer at least seventy-two (72) hours prior to the time and date fixed for trial, and such appearance, may enter a waiver of trial, admit liability and pay the civil penalty established for the offense charged. Such summons shall provide that a signature to an admission of liability shall have the same force and effect as a judgment of court, however, an admission shall not be deemed a criminal conviction for any person.

7. If a person charged with a violation does not elect to enter a waiver of trial and admit liability, the violation shall be tried in the General District Court in the same manner and with the same right of appeal as provided by law. A finding of liability shall not be deemed a criminal conviction for any purpose.
8. The remedies provided for in this Section are cumulative and not exclusive and shall be in addition to any other remedies provided by law.

PART 5`

10-500 ORDINANCE STRUCTURE

10-501

Articles

For purposes of organization, Appendix D, The Zoning Ordinance, is divided into **twelve (12)** Articles. The Article designation number is the first digit (or two as the case may be) of that series of numbers used to identify the respective regulations of the Ordinance; e.g. in the reference number 2-604, the digit 2 represents the Article.

10-502

Parts

Each Article within the Zoning Ordinance is subdivided into several major headings known as Parts. Part designation numbers represent the second digit; e.g. in the reference number 2-604, the digit 6 represents the Part.

10-503

Sections

Each part with the Zoning Ordinance is subdivided into Sections. Section designation numbers are the last one or two digits; e.g. in the reference number 2-604 and 2-612, the digits 4 and 12 represent Section numbers.

10-504 Paragraphs

For purposes of further organization, each Section may be subdivided into Paragraphs which are represented by such numbers as 1, 2, 3; which may be further subdivided as A, B, C . . . (1), (2), (3) . . . and (a), (b), (c).

10-505 Page Numbers

Each Article contains its own separate page numbering system. The page numbers are prefixed by the representative Article number in Roman numerals. As an example, page 10 of Article 8 is designated page VIII-10.

10-506 Referencing

In referencing the various regulations presented in the Zoning Ordinance the following method is employed:

. . . as required, **set forth or provided for** in Article 18.

. . . as required, **set forth or provided for** in Part 3 of Article 18.

. . . as required, **set forth or provided for** in Section 18-302.

. . . as required, **set forth or provided for** in Section 302 above (The Article prefix digit is not employed when a reference is made to another regulation within the same Article).

. . . as required, **set forth or provided for** in Paragraph 1A(2) of Section 302 below.

10-507 Abbreviations

1. Zoning Districts, see Part 0 of Articles 3, **4, 5 and 6.**

C District: A Commercial Zoning District

I District: An Industrial Zoning District

R District: A Residential Zoning District

2. Overlay Zoning Districts, see Part 0 of Article 7.
3. General:
 - A. a. or ac.: Acre(s).
 - B. ANSI: American National Standards Institute.
 - C. ARB: The Fauquier County Architectural Review Board (see Part 3 of Article 10)
 - D. BZA: The Fauquier County Board of Zoning Appeals (see Part 2 of Article 10).
 - E. CIP: Capital Improvements Program (see Definitions).
 - F. dB: Decibel (see Definitions under NOISE).
 - G. DU or du.: Dwelling unit (see Definitions).
 - H. ft.: Foot or feet.
 - I. Incl.: Includes or including.
 - J. Max.: Maximum.
 - K. Min.: Minimum.
 - L. SCC: State Corporation Commission.
 - M. sq. ft.: Square foot (or feet).
 - N. VDOT: Virginia Department of Transportation.

PART 6

10-600

INTERPRETATION

For the purpose of this Ordinance, certain words and terms are to be interpreted as follows:

1. Words used in the present tense can include the future; words

used in the masculine gender can include the feminine and neuter; words in the singular number can include the plural; and words in the plural can include the singular, unless the obvious construction of the wording indicates otherwise.

2. The word "shall" is mandatory.
3. Unless otherwise specified, all distances shall be measured horizontally and at right angles to the line in relation to which the distance is specified.
4. Unless otherwise specified, the term "day" shall mean calendar day.
5. The word "building" includes the word structure, and the word "structure" includes the word building; the word "lot" includes the word plot; the word "used" shall be deemed also to include designed, intended or arranged to be used; the term "erected" shall be deemed also to include constructed, reconstructed, altered, placed, relocated or removed.
6. The terms "land use" and "use of land" shall be deemed also to include building use and use of building.
7. The word "adjacent" means nearby and not necessarily contiguous; the word "contiguous" means touching and sharing a common point of line.
8. The word "State" means the Commonwealth of Virginia. The word "County" means the County of Fauquier, Commonwealth of Virginia, and the term "County boundary" means any exterior boundary of the County or any boundary of unincorporated territory within the County.
9. The terms "Board of Supervisors", "Planning Commission", "Board of Zoning Appeals", "Director of Community Development", "Zoning Administrator", "Health Officer" and other similar offices shall mean the respective Boards, Commissions and Officers of Fauquier County and/or their authorized agents. The use of the term "Board" shall always mean the Board of Supervisors; the use of the abbreviation "BZA" shall always mean the Board of Zoning Appeals; and the use of the term "Director" shall always mean the Director of Community Development. The abbreviation VDOT shall

Article 10: Administration, Appeals.....
Planning Commission Draft
January 21, 1999

always mean the Virginia Department of Transportation.

10. The term "the Code" means the Code of the County of Fauquier, Virginia.